IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 10079 of 2005

Between:

VVS Rama Sastry, S/o./ Venkata Narsaiah,
P.G. Department of Kayachikitsa, Dr. B.R.K.R. Governmetn Ayurvedic College,
Hyderabad - 500 003.

..... PETITIONER

AND

1. The Government of Andhra Pradesh, Rep. By its Secretary to Government, Health, Medical and Family Welfare Department, Secretariat Buildings, Hyderabad.

2. The Commissioner, Department of AYUSH, Government of Andhra Pradesh, Opp to Pass Port Office, Secunderabad.

3. The Central Council of Indian Medicine, Rep. by the Secretary Government of India, Jawahar lal Nehryu Bharatiya chiksha Avam, Homeopathy Anusandhan Bhawan, No. 61-65, IV Floor Opp 'D' Block, Institutional Area, Janakapuri, New Delhi - 110058.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of MANDAMUS and declare the decision of the Hon'ble Tribunal in not granting the interim order in O.A.No. 1838 of 2005 as arbitrary and discriminatory and to further declare the entry against Category-I (b) (ii) if class-B (b) under the heading

qualifications (in column 3) in Annexure-II to the Andhra Pradesh Ayruvedic Medical Service Rules notified vide G.O.Ms.No. 67 Health, Medical and Family Welfare (I.2) Department dated 14-03-2005, which prescribes only 3 years teaching experience in the subject as Professor (for Under Graduate Course)/Reader to acquire eligibility for promotion as Professor (PG Courses) as illegal, without power or jurisdiction, arbitrary and unconstitutional and consequently to hold that a person working in Category -II of Class -B of the service must possess 7 years of teaching experience in Post Graduate Course to acquire eligibility for promotion as Professor for Post Graduate Course in the relevant subject in the Department of Ayush, Government of Andhra Pradesh and grant all consequential benefits to the applicant and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.NAVEEN RAO.

Counsel for the Respondents No.1 & 2 : GP FOR SERVICES I.

Counsel for the Respondents No.3: Mr. A.Rajasekhar Reddy.

The Court at the stage of admission made the following :

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THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION NO.10079 OF 2005

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> "For the reasons stated in the affidavit accompanying, it is therefore prayed that this Hon'ble Court in the interest of justice be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of MANDAMUS and declare the decision of the Hon'ble Tribunal in not granting the interim order in OA No 1838 of 2005 as arbitrary and discriminatory and to further declare the entry against Category-I (b) (ii) of Class-B in clause (b) under the heading "qualification" (in column 3) in Annexure-II to the Andhra Pradesh Ayurvedic Medical Service Rules notified vide Go Ms.No.67 Health, Medical and Family Welare (1.2) Department dated 14-03-2005, which prescribes only 3 years teaching experience in the subject as Professor (for Under Graduate course)/Reader to acquire eligibility for promotion as Professor (PG Courses) as illegal, without power or jurisdiction, arbitrary and unconstitutional and consequently to hold that a person working in Category-II of Class-B of the service must possess 7 years of teaching experience in Post Graduate course to acquire eligibility for promotion as Professor for Post Graduate course in the relevant subject in the Department of Ayush, Government of Andhra Pradesh and grant all consequential benefits to the applicant and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

It is obvious from the prayer that the petitioner approached this Court aggrieved by a decision of the Andhra Pradesh Administrative Tribunal, in ordering 'notice' on an interlocutory application.

The dispute in the O.A. is that whether the Government of Andhra Pradesh can prescribe rules, which are in consistent with a statutory rule framed by the Government of India in exercise of an enactment of the Parliament in the Indian Medicine Central Council Act, 1970. It is demonstrated before us that the rule framed by the Government of India prescribes a particular qualification i.e., seven years of teaching experience in the subject concerned in Post Graduate Degree course for filling up the post of Professor, whereas under the impugned rules, a lesser experience is prescribed. Obviously, the issue involved in the matter is which one of the rules would prevail over the other. It is a pure question of law and *prima facie*, we

are of the opinion that the declaration of the Parliament overrides the declaration of the State.

In such a situation, we are of the opinion that the Tribunal erred in ordering notice on interlocutory application, but in view of the pendency of the matter, we do not want to go further into the merits of the case.

Writ petition is accordingly, disposed of at the stage of admission directing that there shall be interim suspension of the rule impugned before the Tribunal, during the pendency of the O.A.

We desire that the O.A. be disposed of at an early date, preferably within a period of eight weeks from the date of receipt of a copy of the order. No costs.

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J.Chelameswar, J

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M.Venkateswara Reddy, J

Note:

Issue copy in three days.

(bo)

28th June 2005

mrk

To

1. The Secretary to Government, Health, Medical and Family Welfare Department, Government of Andhra Pradesh, Secretariat Buildings, Hyderabad.
2. The Commissioner, Department of AYUSH, Government of Andhra Pradesh, Opp to Pass Port Office, Secunderabad.
3. The Secretary Government of India, Central Council of Indian Medicine, Jawahar lal Nehryu Bharatiya chiksha Avam, Homeopathy Anusandhan Bhawan, No. 61-65, IV Floor Opp 'D' Block, Institutional

Area, Janakapuri, New Delhi - 110058.

4. The Registrar, A.P. Administrative Tribunal, Hyderabad.

5. Two CCs to the G.P. for Services-I, High Court of A.P., Hyderabad (OUT).

6. Two CD copies.

*Form-NIC-OGS/WP{**CTMP**}*